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SUBJECT: KENYA ON THE EVE OF NATIONAL ELECTIONS

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REFS: A. NARIOBI 2104, B. NAIROBI 4788, C. NAIROBI 4756 D. NAIROBI
4745, E. NAIROBI 4827, F. NAIROBI 4826

¶1. Summary: On balance, the Kenyan elections set for December 27 will likely be credible, but determining this will require careful reading of what is likely to be a messy process. Although President Kibaki and his Party of National Unity (PNU) could eek out victory, many observers see a win by opposition candidate Raila Odinga and his Orange Democratic Movement (ODM) as more likely. The contest is too close to call. With Kenyan politics still tribally-based, the stakes are high, and influential members of the teams around each of the candidates are likely planning actions to undermine their opponent's chances. While there are scenarios which could call into question the credibility of the outcome, the efforts that we and others are making - and the credibility of the Chairman of the Electoral Commission -- increase prospects for an acceptably free and fair result. Both candidates are friendly toward the U.S. End Summary.

Tough Test for Kenyan Democracy

¶2. The elections will probably yield what most observers will view as an acceptably credible result. The elections will be a tough test for Kenya's still fledgling democracy (multi-party elections were held under Moi, but they had no credibility given the authoritarian nature of his government). There are serious concerns that we are addressing. Significant flaws should be expected in what will be a messy process. Putting the upcoming election in perspective, it is important to recall there has been only one truly democratic election in Kenya, which took place in 2002.

Tribal Politics and Issues

¶3. The stakes are very high in the elections, particularly because Kenyan politics are still tribally-based. The Kikuyu tribe of President Kibaki, Kenya's largest tribal community, has dominated Kenyan society since the departure of the British administration 44 years ago. The Kikuyu ruled Kenya under Kenyatta and Kibaki, in both instances ensuring that key ministries and the economy were in Kikuyu hands. Although Moi was a Kalenjin, his vice presidents were Kikuyu, and the Kikuyus extended their presence in the professions and the private sector. Kikuyus own land and run businesses throughout the country, engendering resentment in some quarters. Kibaki's main opponent, Raila Odinga, is the leader of the second largest tribal group, the Luo. While it is generally assumed that the tribe of whoever wins will receive economic spoils, tribal politics in Kenya is, fortunately, not entirely a zero-sum game. Kikuyu represent only around a quarter of the population and Luo less than 15 percent of the population, so they must cultivate support from several other significant communities, among the 42 in the country. The prevailing anti-Kikuyu sentiment gives Odinga the advantage in that regard. A not uncommon refrain from average Kenyans is that "it's time to give another tribe a chance."

¶4. The third major presidential contender, Kalonzo Musyoka (who leads the Orange Democratic Party - Kenya), is from the Kamba tribe.

The Kamba have traditionally close ties to the Kikuyu. Kibaki and his team have been working hard to persuade Musyoka to throw his support to Kibaki, even if at the last minute (including hinting at a deal in which Musyoka would become vice president and receive a promise of Kikuyu support for 2012). In this close contest, winning Kamba support would assure Kibaki's victory. Even without a signal from Musyoka, it is possible that a significant segment of Kambas may realize they are throwing away their vote on Musyoka (who cannot win more than about 10 percent of the total vote) and switch to Kibaki.

¶15. Interestingly, the Parliament will likely be divided among the three parties regardless of the presidential outcome. Musyoka at this point still believes maintaining his independence gives him the most credibility and positions him to be the kingmaker in the new Parliament.

¶16. Tribalism and issues were both submerged in 2002, when Kibaki, with Odinga's support, led the National Rainbow Coalition - all united to bring down the long-ruling KANU party and to deny former President Moi his chosen successor, Uhuru Kenyatta (who now supports Kibaki). It is positive that, alongside tribal politics, issues have been discussed at length during this campaign: corruption, devolution of revenue and authority to the provinces, the issue of marginalized areas and groups (including the Muslim community that comprises 10 percent of the population), and infrastructure, among others. Part of the focus on issues reflects the high literacy rate and intense popular interest. Kibaki has run on his impressive record, which includes making primary education free and universal, a 7 percent growth rate (compared with under 1 percent when he took

over), anti-corruption efforts (Kenya won the UN award this year for best civil service reform in the world), affirmative action for women, and youth programs. However, the strong anti-Kikuyu feeling tends to overshadow the record.

Too Close to Call As Campaign Teams Scheme

¶17. Kibaki, Odinga, and Musyoka are all members in good standing of the traditional political class - none of them with clean hands. Radical new departures are unlikely if Odinga wins. Odinga is, however, younger than Kibaki (63 to Kibaki's 76) and a more effective orator and campaigner. Many observers believe that the tide has swung inexorably in his direction. Polls over the past several months have consistently put Odinga ahead, but recent polls show the race as too close to call. The methodology of the various polls is also open to question, so too much weight should not be given to them. Though the odds seem stacked against him, Kibaki could still pull out victory. Odinga has made some crucial errors during the campaign, including signing a controversial secret memorandum of understanding with Muslim leaders; advocating radical devolution to local authorities; rigging the primaries of his Orange Democratic Movement Party to oust parliamentary candidates not hand-picked by him; and at one point showing that he apparently was relying on outside help by bringing in U.S. political consultant Dick Morris. Odinga also appeared to peak relatively early in the campaign. Kibaki, on the other hand, in recent weeks has shown himself to be an energized campaigner. The impact of the Kibaki campaign's greater financial resources and organization are also being felt in the final days of the campaign. (This undoubtedly involves some degree of mobilization of provincial administrations and state resources, though this has not been so egregious as to have a significant effect on the campaigns or to call into question the nominal neutrality of civil servants.) Even given the intense scrutiny of a vibrant civil society and a remarkably free media, questions like alleged misuse of government resources and alleged vote-buying by both sides remain gray areas that are hard to prove. Public scrutiny has constructively exposed incidents of violence and, by spotlighting them, helped to restrain broader violence.

¶18. In terms of Kenyan politics, unseating Kibaki after one term in office would be virtually revolutionary. This makes many observers nervous. That said, Kibaki himself has signaled publicly and privately that he will accept the results of the election. Odinga has done the same, and both have presented the right messages to condemn violence and to emphasize respect for the democratic

process.

Messy, But Probably Credible Elections

¶9. Election day will almost certainly be messy, meaning some violent incidents, and a fair amount of allegations of interference with the voting process. Both Kibaki and Odinga have senior people around them who are desperate to win, and who are willing to do whatever it takes to achieve that. While the potential for dangerous actions must be taken seriously, the track record of the well-run elections in 2002 and the national constitutional referendum in 2005 (which the government lost) bodes well. The Chairman of the Electoral Commission, Samuel Kivuitu, is highly respected and determined to run a clean election. Elaborate procedures are in place to assure a credible and transparent process. The large number of international observers will also help to limit misconduct. The EU has about 120 observers, the U.S. Mission is fielding almost 200 observers plus funding an observer mission of the International Republican Institute led by former A/S Connie Newman, and there will be over 17,000 Kenyan domestic observers. Finally, as we have traveled the country, average Kenyans have emphasized their determination to participate in a free and fair election (even if this is mixed with underlying tribal sentiment).

¶10. If Kibaki loses, Odinga supporters will be riotously happy. At the same time, most of the Kikuyu elite, with their business interests, will want to work out accommodation with the new government (many have already launched feelers). The greater danger is if Odinga loses. He and his supporters will be very tempted -- even if the Electoral Commission and observers deem the process credible -- to declare the election fraudulent and to resort to violence. In that case, there could be significant violence and several tense days while things calm down. While there is no likely scenario that would lead to generalized instability, substantial violence along tribal lines would be a setback for Kenyan democracy.

¶11. We have credible reports that some within the Kibaki camp could be trying to orchestrate a defeat of Odinga in his constituency of Langata, which includes the huge slum of Kibera. This could involve some combination of causing disorder in order to disenfranchise some of his supporters and/or bringing in double-registered Kikuyu supporters of the PNU's candidate from outside. To be elected

President a candidate must fulfill three conditions: have a plurality of the popular vote; have at least 25 percent in 5 of the 8 provinces; and be an elected member of Parliament. Thus, defeat of Odinga in his constituency is a tempting silver bullet. The Ambassador, as well as the UK and German Ambassadors, will observe in the Langata constituency. If Odinga were to lose Langata, Kibaki would become President if he has the next highest vote total and 25 percent in 5 provinces (both candidates will likely meet the 25 percent rule).

U.S. Efforts, Interests, and Impact

¶12. The outside chance that widespread fraud in the election process could force us to call into question the result would be enormously damaging to U.S. interests. We hold Kenya up as a democratic model not only for the continent, but for the developing world, and we have a vast partnership with this country on key issues ranging from efforts against HIV/AIDS, to collaboration on Somalia and Sudan, to priority anti-terrorism activities.

¶13. Because of these important interests, we have worked hard to support a transparent and credible electoral process. Assistant Secretary's Frazer's constant support and the Secretary's calls to

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Kibaki and Odinga on December 22 have been very helpful. Reftels have reported on our support for specific programs and our leadership of donor efforts. Last May I laid out in a major speech at the University of Nairobi the importance the U.S. attaches to free and fair elections. I then joined with other ambassadors to present a non-paper of "principles for free and fair elections" to

the government and publicly. My team and I have traveled throughout the country to get out this message, and I have used the media extensively to encourage a positive process. (Our efforts have included specific support for the right of women candidates to compete without suffering violence and intimidation.)

¶14. As long as the electoral process is credible, the U.S.-Kenyan partnership will continue to grow and serve mutual interests regardless of who is elected. While Kibaki has a proven track record with us, Odinga is also a friend of the U.S. We will seek an early meeting with the winner to review priorities in the bilateral agenda. We have been in close touch with Kibaki and his team, and Odinga and his team, to hammer home the importance of credible elections and the need for the loser to work with the winner to facilitate a smooth transition in the interest of all Kenyans.

¶15. It is likely that the winner will schedule a quick inauguration (consistent with past practice) to bless the result and, potentially, to forestall any serious challenge to the results. There is no credible mechanism to challenge the results, hence likely recourse to the streets if the result is questionable. The courts are both inefficient and corrupt. Pronouncements by the Chairman of the Electoral Commission and observers, particularly from the U.S., will therefore have be crucial in helping shape the judgment of the Kenyan people. With an 87 percent approval rating in Kenya, our statements are closely watched and respected. I feel that we are well-prepared to meet this large responsibility and, in the process, to advance U.S. interests.

RANNEBERGER